

PATENT  
Customer No. 22,852  
Attorney Docket No. 05394.0013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re National Stage of Application No. )  
PCT/FR00/00637 of: )

Stewart COLE )

Serial No.: 09/936,523 )

International Filing Date: March 16, 2000 )

§ 371 Filing Date: September 14, 2001 )

For: DELETE SEQUENCES IN M. BOVIS )  
BCG/M. BOVIS OR M. TUBERCULOSIS, )  
METHOD FOR DETECTING )  
MYCOBACTERIA USING SAID )  
SEQUENCES AND VACCINES )

) Group Art Unit: 1634

) Examiner: Diana B. JOHANNSEN

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Commissioner for Patents  
Washington, DC 20231

Sir:

**SUPPLEMENTAL RESPONSE**

In response to a restriction/election requirement dated December 18, 2002 (Paper No. 9), applicants filed an Amendment and Response to Restriction/Election Requirement on February 19, 2003 ("applicants' Response"). Applicants are filing this paper to supplement that Response.

In Paper No. 9 the Examiner required restriction between Groups I-IX and further required an election of a single molecule or group of molecules for prosecution if Group I, V, VI, VII, or VIII was elected. The Examiner cited Brosch et al., *Infection and Immunity*, 66(5): 2221-29 (1998) ("Brosch"). (Paper No. 9 at page 3.)

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In applicants' Response, Group I, claims 1-2, drawn to nucleic acids, and the molecules of Group E in claim 2 ("RD9: *cobL*, Rv2073c, Rv2074, Rv2075c"), were elected for prosecution, with traverse. Applicants' traversal of the restriction and election requirements relied **in part** on their contention that the Examiner is impermissibly relying on Brosch. Applicants stated that Brosch is not prior art to the instant application. Applicants are filing this paper to clarify this statement.

Brosch was published in May 1998. The instant application claims priority to FR 99/03,250, filed March 16, 1999, and has an international filing date of March 16, 2000. (See Applicants' Transmittal Letter Concerning a Filing Under 35 U.S.C. § 371.) Applicants note that Brosch is the work of the inventors, and thus can not be prior art against the instant application under 35 U.S.C. § 102(a). See *In re Katz*, 687 F.2d 450, 454, 215 U.S.P.Q. 14, 17 (C.C.P.A. 1982). However, Brosch is a printed publication that was publicly available more than one year before the international filing date of the instant application. Brosch may therefore be prior art to the instant application under 35 U.S.C. § 102(b). See 35 U.S.C. § 119(a).

In filing this paper applicants are in no way admitting that Brosch discloses any aspects of the claimed invention, or that Brosch in any way suggests any aspects of the claimed invention. Applicants reserve the right to prove that the pending claims are novel and non-obvious over Brosch if Brosch is cited against the pending claims.

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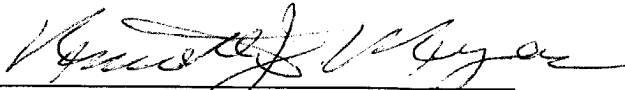
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Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: March 24, 2003

By: 

Kenneth J. Meyers  
Reg. No. 25,146

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